

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

REYES TEYES MARTINEZ

Plaintiff,

v.

SAIA MOTOR FREIGHT LINE, LLC
d/b/a SAIA LTL FREIGHT and
KELLY COLBURN

Defendants.

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Cause No. 3:21-cv-00279

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Comes now Saia Motor Freight Line, LLC d/b/a Saia LTL Freight and Kelly Colburn (hereinafter collectively referred to as “Defendants”) and hereby file this, their Notice of Removal pursuant to 28 U.S.C. §§ 1332 and 1446. In support thereof, Defendants respectfully show as follows:

I. THE STATE COURT ACTION AT ISSUE.

1. On or about August 27, 2021, a civil action was commenced in County Court at Law Number Six of El Paso County, Texas, by the filing of an original petition bearing the caption: *Reyes Teyes Martinez v. Saia Motor Freight Line LLC d/b/a Saia LTL Freight and Kelly Colburn*, Cause No.: 2021DCV3002 (hereinafter referred to as the “State Court Action”). As of the date of the filing of this notice of removal, the following pleadings and/or documents are contained in the State Court Action: **1.** Plaintiff’s Original Petition, **2.** Citation for Saia Motor Freight Line, LLC d/b/a Saia LTL Freight, and **3.** Citation for Kelly Colburn, and **4.** Return of Service. *See* Ex. A,

Copies of State Court Action Pleadings. Said attached exhibits constitute all known process, pleadings, and notices contained in the State Court Action.

2. The State Court Action is a personal injury suit involving an alleged motor vehicle accident (“the Subject Accident”) that occurred in Hudspeth County, Texas on or about September 17, 2019. *See* Ex. A, Plt. Orig. Pet., Part IV, ¶ 8.

3. The plaintiff in the State Court Action is Reyes Teyes Martinez in his individual capacity (hereinafter referred to as “Plaintiff”). *Id.* Based on information from Plaintiff’s Original Petition, Plaintiff is a resident of El Paso County, Texas and is a citizen of the State of Texas. *See* Ex. A, Plt. Orig. Pet., Part II, ¶ 2. Based on this information, at the time the State Court Action was commenced, Plaintiff was a resident of the State of Texas and a citizen of the State of Texas. *Id.*

4. Defendant, SAIA Motor Freight Line, LLC d/b/a SAIA LTL Freight (“Defendant Saia”), is a limited liability company organized under the laws of the State of Louisiana with its principal place of business at 11465 Johns Creek Parkway, Johns Creek, Georgia 30097. Defendant Saia has one member which is SAIA, Inc. SAIA, Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business located at 11465 Johns Creek Parkway, Johns Creek, Georgia 30097. Under 28 U.S.C. § 1332(c)(1), SAIA, Inc. is a citizen of the State of Delaware and a citizen of the State of Georgia. *See* 28 U.S.C. § 1332(c)(1) (The citizenship of a corporation is its State of incorporation and the State in which it has its principal place of business.) SAIA, Inc. was not named as a party-defendant by the Plaintiff in the State Court Action.

5. The citizenship of a limited liability company is determined by the citizenship of each of its members. *Harvey v. Gray Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). Based on the citizenship of SAIA, Inc. which is Defendant Saia’s only member, Defendant Saia¹ is a citizen

¹ Additionally, because SAIA Motor Freight Line, LLC is doing business as SAIA LTL Freight, SAIA Motor Freight Line, LLC and SAIA LTL Freight are one and the same without any legal distinction. For purposes of thoroughness,

of the State of Delaware and a citizen of the State of Georgia.

6. Defendant, Kelly Colburn (hereinafter referred to as “Defendant Colburn”), is a resident and a citizen of the State of Kansas. Defendant Colburn resides at 4130 Southeast 210th Street, Atlanta, Kansas 67008. *See* Ex. A, Plt. Orig. Pet., Part II, ¶ 4. Defendant Colburn is not a resident or citizen of the State of Texas because Defendant Colburn is a resident and citizen of the State of Kansas.

7. Defendant Saia was served with a copy of the citation and petition in the State Court Action on Wednesday, October 13, 2021. Defendant Colburn was served with a copy of the citation and petition in the State Court Action on Tuesday, October 19, 2021. As such, this notice of removal is filed within thirty (30) days of receipt of the petition and is timely filed under 28 U.S.C. § 1446(b).

8. No hearings have been scheduled in the State Court Action. A jury trial was requested by the Plaintiff in the State Court Action.

9. The State Court Action is pending within this district and division, as is required for removal by 28 U.S.C. § 1441(a). *See* Ex. A.

10. This Notice of Removal is filed within thirty days of the dates (*see supra* ¶ 7) when Defendants were served with copies of the citation and petition, which is also the respective dates on which Defendants had notice of their removal grounds: diversity of citizenship jurisdiction.

II. GROUNDS FOR REMOVAL – COMPLETE DIVERSITY OF CITIZENSHIP.

11. The district courts of the United States have original jurisdiction over this action based on diversity of citizenship among the parties, in that Defendant Saia and Defendant Colburn are now,

Defendant Saia affirmatively asserts that SAIA LTL Freight is a citizen of the State of Delaware and a citizen of the State of Georgia because SAIA LTL Freight is Defendant Saia’s business name, and Defendant Saia and SAIA LTL Freight are one and the same entity.

and were at the time the State Court Action was commenced, diverse in citizenship from the Plaintiff. Defendant Saia and Defendant Colburn are not currently citizens or residents of the State of Texas, nor were they citizens or residents of the State of Texas at the time the State Court Action commenced.

12. Removal of the State Court Action is proper under 28 U.S.C. Section 1441, since it is a civil action brought in a state court. *See* 28 U.S.C. § 1441. The federal district courts have original jurisdiction over the subject matter pursuant to 28 U.S.C. Section 1332 because Defendants and Plaintiff are diverse in citizenship. *See* 28 U.S.C. § 1332.

III. GROUNDS FOR REMOVAL – JURISDICTIONAL AMOUNT.

13. Based on the express allegations contained by Part X (¶ 20) of Plaintiff's Original Petition, Plaintiff seeks monetary relief over \$250,000.00 (Two Hundred Fifty Thousand Dollars). *See* Ex. A, Plt. Orig. Pet., Part X, ¶ 20. Defendants are entitled to rely on Plaintiff's allegation regarding the monetary amount contained in his Original Petition to establish the jurisdictional requirement of 28 U.S.C. § 1332(a). *See* 28 U.S.C. § 1446(c)(2). Thus, the amount in controversy in this action exceeds, exclusive of interest and costs, the sum of \$75,000 in accordance with 28 U.S.C. § 1332.

IV. OTHER REMOVAL MATTERS.

14. Defendants reserve the right to amend or supplement this Notice of Removal.

15. Pursuant to 28 U.S.C. § 1446(d), Defendants shall give Plaintiff written notice of the filing of this Notice of Removal, and shall file a written notice of this Notice of Removal with the Clerk of the District Court of El Paso County, Texas, County Court at Law Number Six, attaching a file-stamped copy of this Notice of Removal.

16. Pursuant to 28 U.S.C. §§ 1332 and 1446, this action is removable to the United States District Court for the Western District of Texas (El Paso Division).

Respectfully submitted,

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Attorneys for SAIA Motor Freight Line, LLC
d/b/a SAIA LTL Freight and Kelly Colburn

CERTIFICATE OF SERVICE

I certify on this the 5th day of November of 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties, through their counsel of record, by operation of the Court's CM/ECF electronic filing system. Parties may access this filing through the Court's notice of filing:

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- ☐ *Via Electronic Service*
- ☒ *Via Facsimile Transmission*
- ☒ *Via E-Mail*
- ☐ *Via Certified Mail, RRR*
- ☐ *Via USPS First Class*
- ☐ *Via Hand Delivery*
- ☐ *Via Commercial Delivery Service*

/s/ Sergio E. Chavez
SERGIO E. CHAVEZ